REMARKS

Applicants acknowledge receipt of the Examiner's Office Action dated July 10, 2008.

Claims 1, 3, 5-9, 11, 13-17, 19, 21-29 and 32 have been rejected.

Claim 33 is new.

Claims 5, 13, 21 and 32 are cancelled.

Claims 1, 3, 6-9, 11, 14-17, 19, 22-29 and 33 are now pending in the application.

Claims 1, 7, 9, 15, 17, 21, 22 and 25-27 have been amended.

Rejection of Claims under 35 U.S.C. § 112

Claims 5, 7-8, 13, 15-16, 21 and 23-27 stand rejected under 35 U.S.C. § 112, second

paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject

matter which applicant regards as the invention. The Office Action states:

> Claims 1, 9 and 7 have the limitation of "automatically providing a real-time price quote for the requested function space based on the set of pricing rules even when it is determined that the requested function space satisfying one or more of the plurality of criteria is unavailable". Claims 5, 13 and 21 have a limitation of "receiving an acceptance of the price quote from the requested function space from a user and establishing a reservation for the requested function space". How can you reserve something that is unavailable?
>
> ...
>
> Claims 7-8 depend on claim 5, claims 15-16 depend on claim 13, and claims 23-24 depend on claim 21.

See Office Action, p.3. While not conceding that the previous versions of Claims 5, 13 and 17

were indefinite, and while reserving the right to pursue the previous versions of Claims 5, 13 and

17 in a subsequent continuing application or request for continuing examination, Applicants have

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cancelled Claims 5, 13 and 21 in response to the Examiner's rejection. Independent Claims 1, 9 and 17 now recite the limitation that, "if said function space is unavailable, said reservation comprises an overbooking." Claims 7, 15 and 23, formerly dependent on Claims 5, 13 and 21, have been amended to depend on Claims 6, 14 and 22, respectively. Applicants respectfully submit that the overbooking limitation is supported at paragraph [0056], which states:

> [0056] For one embodiment, authorization levels and overbooking are employed to provide optimal use of space products. That is, given that the demand for space fluctuates often, the hotels need to have away of adjusting to the demand. Using authorization levels, the hotels can accept more reservations than the number of physical spaces available. Then if certain reservations are cancelled, the hotel still has enough reservations to fully use the particular space. For example, if a hotel has 5 small rooms, it might create a "small" category, and set the authorization level for a specific period of time to 7. This would allow the hotel to accept 2 extra reservations. An overbooking is a reservation that has been accepted even though it exceeds the authorization level for the function space. For one embodiment, an option, (a waiting queue beyond overbookings) is used. When a function is cancelled the reserved space is reassigned to functions that were overbooked and optioned. That is, the established reservation is released and the space is reallocated.

See Published Application, ¶ [0056]. As the above-cited paragraph provides an exemplary and non-limiting embodiment of the recited limitations, Applicants respectfully request that the Examiner withdraw the rejection of Claims 7-8, 15-16 and 23-24 under 35 U.S.C. § 112, second paragraph.

The Examiner has further rejected Claims 25-27, stating:

> Claims 25-27 state that the request includes a plurality of criteria selected from a group of criteria consisting of current demand. It is not clear to the Examiner what applicant means by this.

See Office Action, p.3. While not conceding that the previous versions of Claims 25-27 were indefinite, and while reserving the right to pursue the previous versions of Claims 25-27 in a subsequent continuing application or request for continuing examination, Applicants have

amended Claims 25-27 to remove the recitation of "current demand." Applicants respectfully request that the Examiner withdraw the rejection of Claims 25-27 under 35 U.S.C. § 112, second paragraph.

<div align="center"><u>Rejection of Claims under 35 U.S.C. § 103</u></div>

Claims 1, 3, 5-9, 11, 13-17, 19 and 21-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0069094 by *Bingham et al.*, (*Bingham*) in view of U.S. Patent Application Publication No. 2005/0033613 by Patullo *et al.* (*Patullo*). Claim 32 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bingham* in view of *Patullo* and further in View of "Christmas in Williamsburg" by Edward B. Fiske (*Fiske*). While not conceding that the cited references qualify as prior art, but instead to expedite prosecution, Applicants have chosen to respectfully disagree and traverse the rejections, to the extent that rejections may be applied against the amended claims, as follows. Applicants reserve the right, for example, in a continuing application or request for continuing examination, to establish that the cited references, or other references cited now or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed.

In order for a claim to be rendered invalid under 35 U.S.C. §103, the subject matter of the claim as a whole would have to be obvious to a person of ordinary skill in the art at the time the invention was made. *See* 35 U.S.C. §103(a). This requires: (1) the reference(s) must teach or suggest all of the claim limitations; (2) there must be some teaching, suggestion or motivation to combine references either in the references themselves or in the knowledge of the art; and (3) there must be a reasonable expectation of success. *See* M.P.E.P. 2143; M.P.E.P. 2143.03; *In re Rouffet*, 149 F.3d 1350, 1355-56 (Fed. Cir. 1998).

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Applicants respectfully submit that the present Office Action does not articulate a *prima facie* case of obviousness over the combination of *Bingham* with *Patullo*, because the sections of *Bingham* and *Patullo* cited in the Office Action do not teach or suggest all of the recited limitations of amended Claim 1, or of amended Claims 9 and 17, which are rejected on similar reasoning. Amended Claim 1, for example, recites:

> a digital processing system receiving a request for a function space, the digital processing system comprising availability information for a plurality of function spaces at a plurality of properties and a set of pricing rules, the request comprising a plurality of criteria;
>
> determining an availability of the requested function space based upon some or all of the availability information and one or more of the plurality of criteria;
>
> automatically providing a real-time price quote for the requested function space based on the set of pricing rules in spite of having determined that the requested function space satisfying the one or more of the plurality of criteria is unavailable;
>
> receiving an acceptance of the price quote for the requested function space from a user; and
>
> establishing a reservation for the requested function space, wherein, if said function space is unavailable, said reservation comprises an overbooking.

See, e.g., Claim 1. The combination of *Bingham* and *Patullo* does not teach or suggest all elements of Applicants' amended Claim 1.

Specifically, Claim 1 recites, "automatically providing a real-time price quote for the requested function space based on the set of pricing rules in spite of having determined that the requested function space satisfying the one or more of the plurality of criteria is unavailable." The Office Action asserts that "the Examiner is interpreting this limitation as simply providing a price quote without regard to availability." Applicants respectfully submit that this reading of the claim is improper, as it neglects several of the limitations specifically recited in the claim. Applicants respectfully note that condensing the recited "automatically providing a real-time

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price quote for the requested function space based on the set of pricing rules" to "providing a

price quote" unfairly edits the claim so as to render meaningless the words actually used in the

claim. Applicants respectfully submit that "all words in a claim must be considered in judging

the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 165 USPQ

494, 496 (CCPA 1970).

The present Office Action alleges that the combination of *Bingham* with *Patullo*, through

text in *Patullo*, teaches:

> direct price quote requests (Figures 4 and 5; discloses that the price quote given
> does not guarantee or promise availability of the desired suite, it simply gives a
> price quote based on the users search criteria) even if the request is unavailable on
> certain dates (paragraphs 0023, 0031 and 0033; disclose that this information is
> given out before the user is aware if there is availability in their requested room).

See Office Action, page 8. Applicants note that the Examiner's argument was pointed to a

previous version of the claims. Applicants respectfully submit that the cited texts do not provide

any suggestion of a quote of price without regard to availability. The first cited text states:

> [0023] Referring now to the drawings wherein the showings are for the purposes
> of illustrating a preferred embodiment of the invention only and not for purposes
> of limiting same, FIG. 1 shows a general flow diagram illustrating operation of a
> reservation system (also known as a "booking engine") according to a preferred
> embodiment of the present invention. First, a rates and reservation inquiry display
> is presented to a user (step 10). The user indicates whether they are a direct
> customer or a travel agency (step 12). If the user is a travel agency, a travel
> agency ID is entered (step 16) and a travel agent price quote request display is
> presented to the user (step 18). Similarly, if the user is a direct client, then a direct
> client price quote request display is presented to the user (step 14). It is then
> determined whether a selected resort allows children (step 20). If so, the user is
> provided with a display to enter child information (e.g., age) in step 22. This child
> information may also be important to making flight arrangements in order to
> reserve a seat suitable for infants/toddlers. If no children are allowed at the
> selected resort, the reservation system proceeds to steps 30-34 for travel agents,
> and steps 40-44 for direct clients. At steps 30 and 40, the user is presented with a
> price quote result display, at steps 32 and 42, the user is presented with a
> reservation booking request display, and at steps 34 and 44 the user is presented
> with a reservation booking confirmation display 34.

See Patullo, ¶[0023]. It is noteworthy that the notion of a quote of price in spite of having

determined unavailability is entirely absent. The cited text certainly neither teaches nor suggests

"automatically providing a real-time price quote for the requested function space based on the set

of pricing rules in spite of having determined that the requested function space satisfying the one

or more of the plurality of criteria is unavailable."

The second cited text does not remedy this deficiency, stating:

> [0031] Upon entry of the information in the price quote request display, a price
> quote result display is generated (FIG. 5). This display provides a listing of room
> accommodations at the selected resort, pricing with resort only, and pricing with
> airfare (economy and/or first class). Moreover, this display also provides a
> summary of the basic selection information from the price quote request display,
> and allows a user to view images (e.g., a video) of the selected resort.
> Furthermore, this display may also informs the user of minimum night stay
> requirements and maximum adults per accommodation. It should be appreciated
> that in accordance with a preferred embodiment, the airfare pricing is determined
> by accessing a "local" database with prestored pricing information, rather than
> accessing an "outside" computer network, such as Sabre, Worldspan, or Amadeus
> for pricing information.

See Patullo, ¶[0031]. Again, no quote of price in spite of having determined unavailability is

taught or suggested. The cited text certainly neither teaches nor suggests "automatically

providing a real-time price quote for the requested function space based on the set of pricing

rules in spite of having determined that the requested function space satisfying the one or more

of the plurality of criteria is unavailable." The lack of a quote of price in spite of having

determined unavailability persists in the third cited text, which states:

> [0033] It should be appreciated that after entry of the information associated with
> the price quote request display, the user is informed of the dates when a room
> category (or multiple categories) are unavailable for sale (FIG. 9). This allows a
> user to go back one step and easily select travel dates either before or after the
> unavailable period. **This display of unavailable dates prevents** a user from
> having to select date after date in a trial and error fashion to figure out when a
> desired room category is available for sale both before and after the original travel
> period requested. Multiple unsuccessful searches that do not aid the user towards
> a more informed subsequent search can frustrate the user and lead them to
> abandon the reservation process. FIG. 9 shows another exemplary price quote
> request display wherein economy and first class airfare is shown, and where room

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> category unavailability is indicated for one type of room accommodation. Room
> category unavailability is indicated for all dates overlapping with selected dates
> from the price quote request display.

See Patullo, ¶[0033] (emphasis added). While the accompanying Figure 5 and Figure 8 do

contain an ambiguous disclaimer that prices are "availability not confirmed," the absence from

the combination of *Bingham* with *Patullo* of the teaching or suggestion of quote of price in spite

of having determined unavailability undermines the present Office Action's *prima facie* case of

obviousness by eliminating from the combination a recited element.

Further, the underlined portions of the cited text indicate, as does the presence of an

unavailability warning **as a substitute for a price** in Figure 9, that the *Patullo* teaches away

from the recited "automatically providing a real-time price quote for the requested function space

based on the set of pricing rules in spite of having determined that the requested function space

satisfying the one or more of the plurality of criteria is unavailable" by withholding a price when

availability is in question. The Office Action alleges that:

> [I]t would have been obvious to one of ordinary skill in the art to incorporate into
> the reservation system of Bingham the price quotes taught in Patullo so as to
> provide enhanced convenience for the user by providing the user with pricing
> package information after entry of the information into the request display. One
> would be motivated to include this information so that a user can have an idea of
> what prices are for different amenities and to comparison shop, finding out if they
> price information is in line with market rates. Often people use price quotes to get
> an idea how much a particular reservation request is going to cost and use these
> quotes in making a determination of which facility to commit to for a reservation.
> Therefore, it would have been obvious to provide a price quote to a user searching
> for reservation information since in the reservation industry it is common business
> practice to provide a price quote to a user such as if one calls a hotel to get rates
> on single rooms, double rooms, luxury suites, rooms with balconies over the
> ocean, etc.

See Office Action, p.8. Applicants note that the Examiner's argument was pointed to a previous

version of the claims. This assertion of obviousness, however, does not overcome the plain

contrary teaching of the reference and requires a flatly counterintuitive understanding of the

behavior of sellers. The Office Action suggests that a maker of reservation systems, to be used

by sellers of luxury goods such as the resort vacations shown in *Patullo*, "would be motivated to include this information so that a user can have an idea of what prices are for different amenities and to comparison shop, finding out if the price information is in line with market rates." Applicants respectfully submit that sellers of luxury goods, such as resort vacations, are not motivated to encourage comparison shopping, particularly on the basis of price, and the Examiner's statement of motivation contradicts human nature. That a buyer might want price data or that "people use price quotes to get   an idea how much a particular reservation request is going to cost" would not motivate one skilled in the art of building point of sale systems to provide this data (or much less to combine *Patullo* with *Bingham*, as alleged), as such data might potentially reduce the likelyhood of closing the sale. Applicants respectfully submit that statement of motivation that contradicts human nature is unlikely to reflect the motivations of one skilled in the relevant art.

Further, even if one skilled in the art were motivated to proceed in a manner contrary to human nature, one skilled in the art would not be motivated by the reference to contradict the plain teaching of the reference. Applicants claim "automatically providing a real-time price quote for the requested function space based on the set of pricing rules in spite of having determined that the requested function space satisfying the one or more of the plurality of criteria is unavailable." The reference teaches "room category unavailability is indicated for one type of room accommodation. Room category unavailability is indicated for all dates overlapping with selected dates from the price quote request display." The diagram (Figure 9) shows the unavailability indicated <u>in place of price</u>, thereby <u>teaching away from </u>Applicants' recited claim limitation and irredeemably undercutting the Office Action's assertion of obviousness.

The Examiner has courteously responded to this argument at Page 14 of the present Office Action, stating:

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> [T]he fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. *See Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Further figure 8 nor figure 9 of Patullo were used to teach the limitation of providing a price quote for selected spaces regardless if it is available or not, Figure 5 was for this reason and Figure 5 displays no warning of unavailable rooms. Since the Examiner has used figure 5 to teach this limitation, the Examiner respectfully disagrees that it teach away from the applicants invention and asserts that figure 5 shows the limitation as currently claimed.

See Office Action, p.14. Applicants note that the Examiner's argument was pointed to a previous version of the claims. As an initial matter, Applicants respectfully submit that Applicants have not, as the Office Action alleges, "recognized another advantage which would flow naturally from following the suggestion of the prior art." Applicants have, on the contrary, claimed an invention which proceeds away from the teachings of *Bingham* and *Patullo*. Applicants submit that the fact that inventor "proceeded contrary to the accepted wisdom of the prior art" [teaching away] is "strong evidence of nonobviousness." *See W.L. Gore and Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303, 312 (Fed. Cir. 1983).

Applicants respectfully submit that it "is impermissible within the framework of Section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." *See In re Hedges*, 783 F.2d 1038, 228 USPQ 685, 687 (Fed. Cir. 1986). Applicants respectfully submit that no evidence exists within the combination of *Patullo* and *Bingham*, and more particularly within Figure 5, to suggest providing a price quote <u>in spite of having determined</u> unavailability. Even if Figure 5 were to ambiguously suggest providing a price quote without having determined availability, a notion which Applicants do not concede and which is not supported by the mere presence of a disclaimer in the figure, seizing on the *ambiguity* of Figure 5 in spite of the *clearly contrary* teachings of Figure 9 impermissibly distorts the reference and picks and chooses from the

reference only so much as will support the Examiner's position, to the exclusion of other parts necessary to the full appreciation of what the references fairly suggests.

Simply stated, the combination of *Patullo* with *Bingham* does not teach "automatically providing a real-time price quote for the requested function space based on the set of pricing rules in spite of having determined that the requested function space satisfying the one or more of the plurality of criteria is unavailable," either through Figure 5 or elsewhere. The combination of *Patullo* with *Bingham* does teach away from "automatically providing a real-time price quote for the requested function space based on the set of pricing rules in spite of having determined that the requested function space satisfying the one or more of the plurality of criteria is unavailable," by displaying unavailability as a substitute for price. Thus, Applicants respectfully submit that the present Office Action does not articulate a *prima facie* case of obviousness over the combination of *Bingham* with *Patullo*, because the sections of *Bingham* and *Patullo* cited in the Office Action do not teach or suggest all of the recited limitations of amended Claim 1, or of amended Claims 9 and 17, which are rejected on similar reasoning.

Further, independent Claim 1 now recites, "receiving an acceptance of the price quote for the requested function space from a user; and establishing a reservation for the requested function space, wherein, if said function space is unavailable, said reservation comprises an overbooking." When these limitations were formerly recited in Claim 5, the Office Action alleged that the limitations were taught by the combination of *Bingham* with *Patullo*, through *Bingham*, at page 5, paragraph 0037. The first cited text states:

> [0037] With reference now to FIG. 12, a meeting package reservation confirmation screen of meeting planner client 106 is illustrated. In addition to including summary information of the planner-specified meeting facility criteria as adjusted during the meeting package reservation process as shown, the confirmation screen also includes a meeting package confirmation number 1202, a total, actual cost figure 1204, and a cost breakdown 1206.

See Bingham, ¶[0023]. The Examiner also points to reference character 416 of Figure 4 and reference character 516 of Figure 5. Nothing in this text or in the cited figures teaches or suggests "receiving an acceptance of the requested price quote from a user," and, further, none of the cited texts mentions the concept of an overbooking. The cited figures, while indicating transmission of a confirmation message to a user and pricing a meeting package based on a customer profile, do not indicate receiving anything from the user. Thus, Applicants respectfully submit that the present Office Action does not articulate a *prima facie* case of obviousness over the combination of *Bingham* with *Patullo*, because the sections of *Bingham* and *Patullo* cited in the Office Action do not teach or suggest all of the recited limitations of amended Claim 1, or of amended Claims 9 and 17, which are rejected on similar reasoning.

Further, the Final Office Action has cited *Fiske* at page 1, lines 24-28 with respect to the recitation in former Claim 32 of the "accepting the reservation when the function space is not available." The Final Office Action had stated with respect to the previous limitation that the Examiner was "taking this limitation to mean that when the space is not available the user is put on a waiting list or a list of people to contact if the space becomes available, based on applicants specification paragraph [0056]." *See* Office Action, page 9. Such an interpretation of the claim cannot be reconciled with the clear distinction in the specification between a waiting list and a reservation accepted in spite of the lack of available space. Paragraph [0056], which is quoted in its entirety above, states "An overbooking is a reservation that has been accepted even though it exceeds the authorization level for the function space. For one embodiment, an option, (a waiting queue beyond overbookings) is used." Thus, the specification clearly establishes a distinction between a waiting list and a reservation accepted in spite of the lack of available space. Applicants have chosen to amend the current claims to use the word "overbooking" to further clarify this distinction. *Fiske*, by way of contrast, states:

> The foundation maintains a waiting list, and those with with a certain amount of flexibility in their holiday schedules can often benefit from cancellations a few weeks before Christmas.

See Fiske, pg. 1, lines 21-22. Thus, the combination of *Bingham* with *Patullo*, even with the addition of *Fiske*, cannot be fairly said to teach or suggest the recited "receiving an acceptance of the price quote for the requested function space from a user; and establishing a reservation for the requested function space, wherein, if said function space is unavailable, said reservation comprises an overbooking."
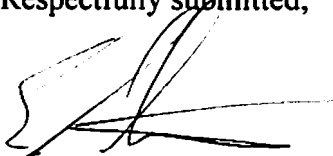
Because all claim limitations must be taught or suggest by a combination of references to render a claim obvious under 35 U.S.C. §103, Applicants submit that the failure of the Final Office Action to point to any teaching or suggestion of a limitation of independent Claim 1 demonstrates that Claim 1 and all claims depending therefrom are allowable over the combination of *Bingham* with *Patullo*. Applicants respectfully request allowance of Claim 1 and all claims depending therefrom. Applicants similarly respectfully request a withdrawal of all rejections of an and an immediate notice of allowance of Claims 9 and 17 and all claims depending therefrom. Further, Applicants respectfully request a notice of allowance with respect to new independent Claim 33.

CONCLUSION

Applicants submit that all claims are now in condition for allowance, and an early notice to that effect is earnestly solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is requested to telephone the undersigned.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,

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